

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4077 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?

No.

R.S. PATEL

Versus

GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION,

Appearance:

MS PJ DAVAWALA for Petitioner

M/S TRIVEDI & GUPTA for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 07/05/99

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing the order dated 1-6-92 Annexure-C of the Vice-Chairman and Administrative Manager of the G.I.D.C., Ahmedabad whereby the petitioner has been dismissed from the service on the ground that he was convicted of the criminal charges by the Court of Law. Later on, this Court set aside that acquittal order of

the petitioner and convicted him for the offence punishable u/s 5 (1)(d) read with Sec. 5(2) of the Prevention of Corruption Act and Sec. 161 of the I.P. Code and the petitioner was ordered to undergo rigorous imprisonment for one year and to pay fine of Rs. 2,000/- i/d he was ordered to undergo further rigorous imprisonment for six months.

2. The complaint was lodged and the Anti-Corruption Bureau got red handed the petitioner in trap organised by the said Anti-Corruption Bureau. The petitioner was tried in the Sessions Court and he was acquitted from the charges levelled against him by the Sessions Court. The prosecution filed the Revision Application before this Court wherein the order of acquittal was set aside and the petitioner was convicted for the offence punishable u/s 5(1)(d) read with Sec. 5 (2) of the Prevention of Corruption Act and u/s 161 of the I.P. Code and this Court sentenced the petitioner to undergo one year rigorous imprisonment and fine of Rs. 2,000/- i/d to undergo further rigorous imprisonment for six months. On the basis of the conviction the departmental passed dismissal order, as stated above. Thereafter, the petitioner filed a representation before the authority concerned and that representation was also rejected by the order dated 23-7-1992.

3. The main contention of the learned counsel for petitioner is that Rule 40 of the G.I.D.C. (Staff) Regulations, 1963 provides nine penalties. Extreme penalty is 9th, dismissal from the service which shall ordinarily be a disqualification for future employment. The procedure for imposing the penalties provided under Rule 40A of the said Regulations, 1963. Special procedure has been provided under Rule 40C for awarding the penalty without following the procedure laid down in the said Regulations, which reads as under :-

"Special Procedure in certain cases :

Notwithstanding anything contained in regulation 40-A where penalty is to be imposed on an employee on the ground of conduct which has led to his conviction on criminal charge and it is considered by the disciplinary authority not expedient to follow the procedure laid down in the said regulation, the disciplinary authority may consider the circumstances of the case and pass such order as it, may deem fit."

4. The contention of the learned counsel for the

petitioner is that the said Regulations provide nine penalties and the dismissal from service is the extreme penalty. The petitioner has not been given an opportunity of hearing by the department on the quantum of sentence as no notice has been issued to the petitioner to show the circumstances in which the lesser punishment could have been awarded to him. Secondly, the Disciplinary Authority is required under the provisions of Rule 40C of the said Regulations to form an opinion that it is not expedient to follow the procedure laid down for awarding any punishment. The learned counsel for the petitioner relied on the decision of this Court dated 12-7-1994 rendered in Special Civil Application No. 6869/91 wherein it has been held that "the Disciplinary Authority may consider the circumstances of the case and pass such orders as may deem fit and the Disciplinary Authority was required to form an opinion that it was not expedient to follow the procedure laid down in Regulation 40A of the Regulations."

5. I have considered the submissions made on behalf of the petitioner. The impugned order is in Gujarati language. I am not conversant with such language though that order has been explained in English by the learned counsel for the petitioner in the Court. From the impugned order, it appears that the Disciplinary Authority has passed the impugned order of dismissal straightway without issuing any notice to the petitioner or without forming any opinion to dispense with procedure laid down for imposing the penalty.

6. Learned counsel for the petitioner after consultation with the petitioner who is present in the Court makes a statement that in case this petition is allowed and the respondent is directed to reinstate the petitioner, the petitioner will not claim any back wages and the petitioner be afforded an opportunity of hearing before passing any penalty order.

7. I have given my anxious thought to the submissions made on behalf of the petitioner. Regulation 40C of the Regulations prescribes special procedure for certain cases and provides that where penalty is to be imposed on an employee on the ground of conduct which has led to his conviction on criminal charge and it is considered by the disciplinary authority not expedient to follow the procedure laid down under Regulation 40A the disciplinary authority may consider the circumstances of the case and pass such order as it, may deem fit.

8. The provisions of Regulation 40C requires two

things, (i) the Disciplinary Authority is required to form an opinion for not following the procedure laid down for imposing the penalty and (ii) the Disciplinary Authority may consider the circumstances of the case. In the present case both the ingredients are lacking. Firstly, the Disciplinary Authority does not appear to have formed any opinion that the procedure laid down under Regulation 40A should not be followed. Secondly, the petitioner can be given a right to place certain facts which may entitle him to award lesser punishment than which has been awarded to him. Admittedly, in the present case, no show cause notice on the quantum of punishment has been issued to the petitioner and hence the petitioner would not be able to explain the facts and circumstances before the authority concerned for awarding lesser sentence. Secondly, the authority has not given any reason for not following the procedure laid down for imposing the extreme penalty.

9. Considering the facts and circumstances of the case and in view of the statement made by the learned counsel for the petitioner the petition is liable to be allowed and the petitioner is required to be reinstated but he should not be awarded back wages. Accordingly, the petition is allowed and the impugned order of dismissal is quashed and set aside and the respondent department is directed to reinstate the petitioner without any back wages within a month from the date of presentation of a certified copy of this order. The petitioner is directed to make a representation showing the facts and circumstances for awarding lesser sentence within a period of one month and if such representation is made by the petitioner within the stipulated period, the respondent department will consider the facts and circumstances mentioned in the representation and decide the same within a period of two months thereafter, in accordance with law.

10. Accordingly, rule is made absolute to the aforesaid extent, with no order as to costs.

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/JVSatwara/